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MAY 20 2004

OFFICE OF PETITIONS

In re Application of
Viltro et al.
Application No.10/631,158
Filed: July 31, 2003
Attorney Docket No. CM2500MC
Title of Invention: Process For Making Pouches

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed December 19, 2003, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is DISMISSED.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on July 31, 2003, without a signed oath or declaration. Accordingly, on October 27, 2003, a "Notice to File Missing Parts of Application" was mailed requiring, for the purposes of this decision, an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on December 19, 2003, a petition, and a partially executed declaration were received. A second Notice of Missing Parts was mailed on January 29, 2004 requiring the \$130.00 surcharge for late filing. The late surcharge fee in the amount of \$130.00 was provided on February 12, 2004 as well as a Declaration of Facts to support the petition.

Pursuant to petitioner's request deposit account 16-2480 has been charged the \$130.00 petition fee.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers. Rule 47 applicant indicates a letter was sent to inventor Gressel's last known address. However, rule 47 applicant did not indicate a copy of the application papers (specification, including claims, drawings, and oath or declaration) was presented to the non-signing inventor. The May 21, 2003 letter to inventor Gressel only indicates the oath and declaration and the assignment papers were sent to Gressel. The Declaration of Facts indicates "documents" and a letter were mailed to Gressel. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). If the application papers were sent to inventor Gressel as statement to that effect should be provided.

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor and he refused to sign.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By delivery service:
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Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

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